No. 87-354

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

THE STATE OF ARIZONA,

Petitioner,

vs.

RONALD WILLIAM ROBERSON,

Respondent.

MOTION TO PROCEED IN FORMA PAUPERIS
IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

ROBERT L. BARRASSO, ESQ.
3100 N. Campbell Ave., #101
Tucson, AZ 85719
(602) 795-2002

The Respondent, RONALD WILLIAM ROBERSON, asks leave to file the attached Brief in Opposition, without payment of costs and to proceed in forma pauperis. Petitioner has been granted leave to so proceed in both the Superior Court of Arizona and Arizona Court of Appeals. Respondent's Affidavit in support of this motion is attached hereto.

RESPECTFULLY SUBMITTED this 28th day of October, 1987.

ROBERT L. BARRASSO
3100 N. Campbell Ave., #101
Tucson, AZ 85719
(602) 795-2002

A F F I D A V I T

STATE OF ARIZONA)
) ss.
County of Pima)

I, RONALD WILLIAM ROBERSON, being first duly sworn, deposes and says that I am the respondent in the above-entitled case; that in support of my Motion to Proceed in Forma Pauperis, I state that because of my poverty I am unable to pay the costs of said case or to give security therefore; that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the costs of proceeding in this court are true:

That I am not presently employed and that I have

ROBERT L. BARRASSO
ATTORNEY AT LAW
3100 North Campbell Avenue
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been incarcerated in Perryville, Arizona State Prison Correctional Facility since March 24, 1986 and will be incarcerated until 2001; that prior to the above date I was unemployed, and my income per month was approximately -0-; that within the last 12 months I have not received any income from any business, profession or other form of self-employment, or in the form of rent payments, interest, dividends, or other sources; that I do not won any cash or checking or savings accounts; that I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing); that there are no persons whom are dependent upon me; that I understand that a false statement or answer to any questions in this Affidavit will subject me to penalties for perjury.

RB for Ro Roberson

SUBSCRIBED AND SWORN to before me this 28th day of October, 1987.

Christine L. Cook
Notary Public

My Commission Expires:
April 30, 1990

ROBERT L. BARRASSO
3100 North Campbell Avenue
Suite 101
Tucson, Arizona 85719
Telephone (602)795-2002

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 1987, I served the foregoing Motion to Proceed in Forma Pauperis upon opposing counsel by causing to be mailed three copies, postage prepaid to:

BRUCE M. FERG
ASST. ATTORNEY GENERAL
315 State Government Bldg.
402 W. Congress
Tucson, AZ 85701-1367

ROBERT L. BARRASSO

SUBSCRIBED AND SWORN to before me this 28th day of October, 1987 by ROBERT L. BARRASSO.

Christine L Cook
Notary Public

My Commission Expires:
April 30, 1990

ROBERT L. BARRASSO
3100 North Campbell Avenue
Suite 101
Tucson, Arizona 85719
Telephone (602)795-2002

Let the Applicant proceed without prepayment of costs or fees or the necessity of giving security therefore.

ORDERED this _____ day of _____, 1987.

JUDGE OF THE SUPREME COURT
OF THE UNITED STATES

No. 87-354

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

THE STATE OF ARIZONA,

Petitioner,

vs.

RONALD WILLIAM ROBERSON,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

ROBERT L. BARRASSO, ESQ.
3100 N. Campbell Ave., #101
Tucson, AZ 85719
(602) 795-2002

QUESTION PRESENTED FOR REVIEW

Did the trial court and the Court of Appeals properly hold that since the Defendant had invoked his Fifth Amendment right to counsel during his initial interrogation and counsel was never provided, that statements made by Defendant pursuant to subsequent interrogation must be suppressed.

TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

Respondent does not take issue with Petitioner's statement of opinions below, its jurisdictional statement and its citation of the constitutional and statutory provisions involved.

STATEMENT OF THE CASE

Respondent does not dispute the statement of the case set forth by Petitioner. However, a few points crucial to the decision of the Arizona Court of Appeals should be set forth more clearly.

On April 16, 1986, Respondent was arrested near the scene of a burglary which had occurred only moments earlier. At that time, he was advised of his rights by Officer Perez, and, "subject replied that he understood his rights, and that he wanted a lawyer before answering any questions." (ROA, pp. 110-112). This same record makes clear that at no time was Respondent supplied an attorney prior to the statements at issue.

Shortly after making the request to speak to an attorney, different officers questioned him while he was in custody at the jail on the April 16 burglary charges. (ROA at 106-107; R.T., April 3, 1986, pp. 23-41). Then on April 19, three days after Respondent had requested a lawyer "before answering any questions" and also after being interrogated once by officers after said request, and while still in custody, Detectives Cota-Robles, Quinn and Thorison

went out to the jail and questioned Respondent again. While it is true that at that point he was read his Miranda rights and stated that he understood them and wanted to talk, he had not been allowed to see a lawyer since his request on April 16 and he had been kept in custody since that time.

It is those statements made on April 19 which were suppressed and which are the subject of this appeal.

SUMMARY OF ARGUMENT

The Petition should not be granted because the issue is already well-settled in Arizona and Federal law, in spite of the contentions of Petitioner. The Court of Appeals decided the case correctly and no further review is necessary.

ARGUMENT

A. Fifth and Sixth Amendments are Clearly Distinct and this is a Fifth Amendment Case.

The State's Petition, by a very confused reading of several United States Supreme Court cases, argues that the Fifth and Sixth Amendment cases are so blurred that Sixth Amendment analysis should always apply to Fifth Amendment cases. A careful reading of those same cases indicate quite the contrary. The Fifth Amendment and Sixth Amendment encompass two very distinct rights. It is true that Fifth Amendment analysis has been, and continues to be, applied to

Sixth Amendment cases, but no case suggests that Fifth Amendment rights should be restricted because of Sixth Amendment analysis.

In Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602 (1966), the Supreme Court recognized that custodial interrogations generate "inherently compelling pressures which work to undermine the individual's will to resist and to compel him to speak where he would not otherwise do so freely." Id. at 467, 86 S.Ct. at 1624. To combat the compelling pressures which are involved in the very nature of custodial interrogations, and to permit a full opportunity to exercise the privilege against self-incrimination, the Court held that prior to initiating any questioning, the State must adequately and effectively apprise the suspect of his rights, "and the exercise of those rights must be fully honored." Id. Thus, prior to initiating any questioning, the State must advise the suspect of its intention to use the statements against the suspect and must also inform the suspect of his right to remain silent and to have counsel present if he so desires. Id. at 468-470, 86 S.Ct. at 1624-1626. Miranda goes on to say that when a defendant requests to remain silent, or if he states that he wants an attorney, the interrogation must cease until an attorney is present. Id. at 473-474, 86 S.Ct. at 1627.

In Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880 (1981), the Supreme Court held that when an accused person in

custody expresses his desire to answer no questions except through counsel, that the suspect is not subject to further interrogation by the authorities until counsel has been available to him, unless the accused starts another conversation. Id. at 484-485, 101 S.Ct. at 1884-1885. In Solem v. Stumes, 465 U.S. 638, 104 S.Ct. 1338 (1984), the Supreme Court stated that the holdings in Miranda and Edwards established a "bright line rule to safeguard pre-existing rights." 465 U.S. at 646. The Court stated the bright line rule as "once the suspect had invoked his right to counsel[,] the suspect had to initiate subsequent communication." Id.

It is clear then that the Fifth Amendment, in certain circumstances, provides its own separate right to counsel apart from the Sixth Amendment. That is to say, once a person is in a situation involving custodial interrogation, and that person has requested counsel, his right to silence entails the right not to speak again unless counsel is present. Indeed, a recent Supreme Court case, Michigan v. Jackson, 106 S.Ct. 1404 (1986), states as follows:

> The question is not whether respondents had a right to counsel at their post-arraignment, custodial interrogations. The existence of that right is clear. It has two sources. The Fifth Amendment protection against compelled self-incrimination provides the right to counsel at custodial interrogations. [Citing Edwards and Miranda]. The Sixth Amendment guarantee of the assistance of counsel also provides the right to counsel at post-arraignment interrogations. (Emphasis added).

Id. at 1407.

In dealing with the Fifth Amendment right to

silence, the focus is on the mental state of the defendant. This focus is to assure that any statements made by him are voluntary. To that end, "the state of mind of the police is irrelevant to the question of the intelligence and voluntariness of respondent's election to abandon his rights." Moran v. Burbine, 106 S.Ct. 1135, 1142 (1986). The Moran case makes a clear distinction between a defendant in custodial interrogation who has simply requested to remain silent and one who has requested not to speak further until consulting with an attorney. In Moran, there was no request for counsel but simply a request to remain silent and a reinterrogation. In distinguishing the two situations, the court stated:

> When a suspect has requested counsel, the interrogation must cease, regardless of any question of waiver, unless the suspect himself initiates the conversation. (Emphasis in original).

106 S.Ct. at 1142, n.1.

In Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321 (1975), Justice White in a concurring opinion stated the distinction between a simple request to remain silent and a request to remain silent until one can speak with an attorney:

> [T]he reasons to keep the lines of communication between the authorities and the accused open when the accused has chosen to make his own decisions are not present when he indicates instead that he wishes legal advice with respect thereto. The authorities may then communicate with him through an attorney. More to the point, the accused having expressed his own view that he is not competent to deal with the authorities without legal advice, a later decision at the authorities' insistence to make a statement without counsel's presence may

> properly be viewed with skepticism.

Id. at 110, n.2, 96 S.Ct. at 329, n.2.

State v. Routhier, 137 Ariz. 90, 669 P.2d 68 (1983), right on point and keeping with current United States Supreme Court case law, states:

> The assertion of the right to counsel is an expression by the accused that he is not competent to deal with the authorities without legal advice. See Edwards v. Arizona, supra. The resumption of questioning in the absence of an attorney after an accused has invoked this right to have counsel present during police interrogation strongly suggests to an accused that he has no choice but to answer. Thus, "a later decision at the authorities' insistence to make a statement without counsel's presence may properly be viewed with skepticism." (Quoting Michigan v. Mosley, supra).

Id. at 97-98, 669 P.2d at 76-77.

In Michigan v. Mosley, supra, the Supreme Court allowed a custodial reinterrogation after defendant asserted his right to remain silent. That case allowed reinterrogation where there was a finding that the right of the defendant to cut off questioning was scrupulously honored. In a footnote, the court stated:

> The dissenting opinion asserts that Miranda established a requirement that once a person has indicated a desire to remain silent, questioning may be resumed only when counsel is present...But clearly, the court in Miranda imposed no such requirement, for it distinguished between the procedural safeguards triggered by a request to remain silent and a request for an attorney and directed that "the interrogation must cease until an attorney is present" only "[i]f the individual states that he wants an attorney." 384 U.S. at 474.

Id. at 104, n. 10, 96 S.Ct. at 326, n. 10.

Thus, Michigan v. Mosley clearly does allow reinterrogation in a custodial situation where a defendant chooses to remain silent. It also makes clear that where a defendant requests counsel, reinterrogation is not allowed.

In summary, the Fifth Amendment has, as its focus, protection against the inherent pressures of custodial interrogation. To that end, once a person is in a situation where he is not free to leave, the State must advise him of his right to remain silent and his right to have an attorney present if he decides to speak. If the defendant requests simply to remain silent, the reinterrogation is allowed if the facts show that the defendant's right to cut off questioning is scrupulously honored. On the other hand, if the defendant requests an attorney, no further custodial interrogation is allowed. This is not because of the rightness or wrongness of any State action, but rather because once a defendant has requested his right to counsel and is questioned further, the defendant has strong reason to believe that he has no choice but to answer. The State's behavior is irrelevant under Fifth Amendment analysis. The only focus is the voluntary nature of the statements.

Quite distinct from this is Sixth Amendment analysis which does not give a defendant a right to counsel until the initiation of formal charges. Michigan v. Jackson, 106 S.Ct. at 1408. In Main v. Moulton, 106 S.Ct. 477, 483-84 (1985), the Supreme Court explained that the Sixth Amendment

embodies " 'a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself. ...The right to counsel safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding." (Quoting Johnson v. Zerbst, 304 U.S. 458, 462-63, 58 S.Ct. 1019, 1022 (1938)).

The right to counsel attaches at or after the time the judicial proceedings have been initiated against a defendant because, after the initiation of adversary criminal proceedings, "the government has committed itself to prosecute, and...the adverse positions of government and defendant have solidified. It is then that the defendant finds himself faced with the prosecutorial forces of organized society and immersed in the intricacies of substantive and procedural criminal law." United States v. Gouveia, 467 U.S. 180, 189, 104 S.Ct. 2292, 2298 (1984).

Accordingly, the language Petitioner cites from Main v. Moulton, supra can be understood in its proper context. To exclude evidence pertaining to charges as to which the Sixth Amendment right to counsel had not attached at the time the evidence was obtained, simply because other charges were pending at that time, would unnecessarily frustrate the public interest in the investigation of criminal activities.

B. The Present Case Involves the Fifth Amendment Only

and the Bright Line Rule of Miranda and Edwards Clearly Applies.

Petitioner makes a gross error by stating that the Routhier case bans any further police interrogation of any in-custody suspect who has invoked his "right to counsel." A proper statement is that Routhier bans any police initiated interrogation of an arrestee who has, as part of the invocation of his right to silence, indicated that he dies not wish to speak unless represented by counsel. This clearly is a proper application of the bright line rule of Miranda and Edwards. In Fifth Amendment analysis, the good faith or claimed ignorance of previous rights assertions by the police officers is irrelevant since the focus is the defendant's own sense of compulsion.

In the presence case, with Defendant having requested an attorney before answering questions, having been questioned two times after that and having been incarcerated for several days without the presence of an attorney, there is clear evidence that the statements were involuntary. As far as the defendant was concerned, his perception of whether he should talk or not was not affected by whether he was talking about crime 1 or crime 2. Rather, his sense of compulsion comes from the custodial setting, the fact that he has requested an attorney and was not supplied one, and the fact that he was questioned again by police. All of these factors show, as set forth in Routhier, that the State's

actions strongly suggested to the accused that he had no choice but to answer. Under these circumstances, there can be no finding that the statements were voluntary and that there had been valid waivers.

Moran v. Burbine, 106 S.Ct. 1135 (1986), handed down in March 1986 reiterates the validity of the bright line rule found in Miranda and Edwards. The case states in a footnote:

> Yet, as both Miranda and subsequent decisions construing Miranda make clear beyond refute, "the interrogation must cease until an attorney is present" only "[i]f the individual states that he wants an attorney." (Citing Michigan v. Mosley).

Id. at 1147, n.4.

The error of the State's argument is most obvious in this statement found on pages 11-12 of the Petition for Writ of Certiorari:

> A fortiori, statements about different offenses, developed at different times, by different investigators, in the course of two wholly independent investigations, should not be treated the same. Inasmuch as there was no nexus whatever between the statements given in this case and the statements given in the case on which Roberson was originally arrested and interrogated, the statements offered in this case should be examined by themselves.

The error is two-fold. First, the focus of the above statement is on police conduct rather than Defendant's conduct. Second, there clearly was a nexus when one focuses on Defendant's conduct: He requested to remain silent and to speak with an attorney. This request was denied and while still incarcerated, two other interrogations took place. The

State simply ignores the clear language found in the Fifth Amendment analysis:

> [W]hether intentional or inadvertent, the state of mind of the police is irrelevant of the question of the intelligence and voluntariness of the respondent's election to abandon his rights.

Moran v. Burbine, 106 S.Ct. at 1142.

Since the focus of the Fifth Amendment is on the Defendant, and since the Defendant in this case was clearly denied a right to counsel after requesting said counsel, yet was interrogated twice while in continual custody without speaking to an attorney, it is clear that the statements were properly suppressed under Fifth Amendment analysis.

C. Independent Source Law is Irrelevant.

The Petitioner goes to great lengths to argue that the independent source doctrine is seriously offended by the "meat-ax Routhier/Robinson approach." Again, Petitioner simply fails to appreciate the focus of Fifth Amendment analysis. As set forth above, the focus is not on the State but on the suspect and the potential for compulsion inherent in any statements which are made while in custody. No matter how innocent the conduct of the State is, and no matter how independent any subsequent interrogation is, it has the same affect on Defendant: If he has requested an attorney and is then asked by police to answer questions, there is an atmosphere created that he has no choice but to answer the questions. This is why subsequent interrogation is wrong.

The Petitioner also argues that it is placed in a worse position than it would have been had it not violated Defendant's rights. This is obviously not true. Had Defendant been supplied with an attorney before any further interrogation, he and his attorney would have decided to proceed with his defense and in all likelihood he would have not made subsequent admissions. It is only when you ignore the effect of subsequent custodial interrogation on the Defendant that one can claim anything close to an independent source. The source of Roberson's statements was not independent but rather caused by continual police custodial interrogation without an attorney.

D. The Routhier Rule is Reasonable.

Routhier does not hold, as the State alleges, that once an accused invokes his right to counsel he can never again be questioned until he is provided with a lawyer, regardless of subject matter. Rather, the rule as set forth in Routhier and its foundational cases, Miranda and Edwards, is that once an accused states that he wishes to remain silent until proved with a lawyer, he cannot be questioned on any subject so long as he remains in custody without speaking to a lawyer.

To hold otherwise would not lead to absurd results. The alleged absurd result set forth in the State's Petition on page 23 again plainly misreads Routhier. If a defendant

is arrested and interrogated about crime A and that questioning is ended when he invokes his right to counsel and he is released, he is no longer in custody. Once he is out of custody, the right to silence is no longer applicable.

CONCLUSION

This case is a simple one to decide when the confused analysis of the State is set aside. Miranda and Edwards clearly hold that a defendant's right to silence under the Fifth Amendment also entails the right to have an attorney present before speaking while in custodial interrogation. The focus of the Fifth Amendment is on the voluntariness of defendant's statements. The bright line rule of Miranda and Edwards requires a finding that where a defendant remains in custody after requesting counsel, any subsequent interrogation would be unduly coercive and, therefore, statements made in subsequent interrogations must be suppressed. The subject matter of those interrogations is irrelevant under Fifth Amendment analysis since it is the voluntariness of the statements that is the issue. In the present case, Defendant clearly decided to speak to counsel before making statements to the officers and indicated as much to the police. He was then confined for several days and re-interrogated without speaking to a lawyer. The statements made during the subsequent interrogation were properly suppressed.

The Court of Appeals and the trial court were correct in suppressing the statements. This Court should deny the Petition for Writ of Certiorari.

RESPECTFULLY SUBMITTED this 28th day of October, 1987.

ROBERT L. BARRASSO
3100 N. Campbell Ave., #101
Tucson, AZ 85719

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of October, 1987, I served the foregoing Brief in Opposition upon opposing counsel by causing to be mailed three copies, postage prepaid to:

BRUCE M. FERG
ASST. ATTORNEY GENERAL
315 State Government Bldg.
402 W. Congress
Tucson, AZ 85701-1367

ROBERT L. BARRASSO

SUBSCRIBED AND SWORN to before me this 28 day of October, 1987 by ROBERT L. BARRASSO.

Christine L Cook
Notary Public

My Commission Expires:
April 30, 1990

App

7

ARIZONA SUPERIOR COURT, PIMA COUNTY

Judge: Pro-Tempore: MICHAEL D. ALFRED
Court Reporter: Janet Thomas

CASE NO. CR-16041/CR-15389
DATE April 3, 1986

STATE OF ARIZONA,	( )	Paul Lauritzen
vs	( )	
RONALD WILLIAM ROBERSON,	( )	Michael Drake
	( )	
	( )	

EVENT SUMMARY

Type: Deft. Mot. Sup. Stmt		Result: Granted		
Date:	Time:	Length:	Div:	Req:
Type: CR-16041		Result: Dismiss w/o Prejudice		
Date:	Time:	Length:	Div:	Req:
Type: CR-15389 (all 4 trials)		Result: Dismiss w/o Prejudice		
Date:	Time:	Length:	Div:	Req:
Type:		Result:		
Date:	Time:	Length:	Div:	Req:

MINUTE ENTRY

PENDING MOTIONS:

Defendant present, in custody.

Janet Thomas reporting.

This is the time set for hearing on the Defendant's Motion to Suppress Statements.

Detective Jerry Cota-Robles is sworn, examined, questioned by the Court, and cross-examined.

State's Exhibit 1, being Sony HF60 cassette tape, is identified.

State's Exhibit 1A, being transcript of taped statement, is identified.

State's Exhibit 2, being copy of letter dated April 30, 1985, is identified.

Linda Brown
Deputy Clerk

State's Exhibits 1 and 1A, previously identified, are admitted for purposes of this hearing, there being no objection.

Counsel argue the Defendant's Motion to Suppress Statements to the Court.

Mr. Drake offers to stipulate after Mr. Roberson was arrested on April 16, 1985, he was advised of his rights by Officer Perez; and, according to his report, "subject replied that he understood his rights, and that he wants a lawyer before answering any questions." After that he was interrogated by Officer Garrison, and after that by Officer Quinn on April 16, 1985; and on April 19 he was interrogated by Officer Cota-Robles and made incriminating statements, which the defense is asking to be suppressed.

Mr. Lauritzen indicates he will agree with that stipulation but requests an opportunity to call Officers Garrison, Quinn and Wright to supplement the record or by supplementing it with their testimony in the Motion to Suppress which was heard last October in CR-15268.

THE COURT TAKES THE MATTER UNDER ADVISEMENT.

Mr. Lauritzen requests that the Court make a ruling before the jury is sworn.

11:23 a.m. The Court stands at recess until 1:00 p.m. this date.

1:06 p.m. Defendant present, in custody. Respective counsel present. Janet Thomas reporting.

UNDER ADVISEMENT RULING:

Linda Brown
Deputy Clerk

As to the Defendant's Motion to Suppress, the Court has read and considered both memoranda of counsel and the testimony that has been taken. The Court also listened to the tape and did some research on its own.

THE COURT FINDS that the Arizona case law has held that, once an accused has invoked his right to counsel, he may not be interrogated concerning that incident or matters inextricably related to that incident pursuant to the holding in State vs. Hensley, Ariz. 137-80. The holding in Hensley was, that continuing to question the defendant on subjects related to the subject for which the accused requested the counsel, is inconsistent with the holding in Miranda vs. Arizona.

State vs. Routhier, Ariz. 137-90, takes State vs. Hensley one step further. In Routhier, the question was whether the defendant's Fifth and Fourteenth Amendment rights were violated when the defendant was interrogated concerning unrelated matters after asserting his right to counsel on another matter. Routhier was based on Edwards vs. Arizona, which held that once the defendant has invoked his right to counsel, he may not be re-interrogated unless counsel has been made available to him or he initiates the conversation. The Routhier Court stated that whether the defendant is re-interrogated about the same offense or an unrelated offense makes no difference for Fifth Amendment purposes. The Routhier Court further stated that Edwards is clear and unequivocal. There is to be no further interrogation by authorities once the right to counsel is invoked, the Court in that case finding that the

Linda Brown
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Attorney for Defendant

FILED IN COURT
Apr 3 '86
Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA,
Plaintiff,
vs.
RONALD WILLIAM ROBERSON,
Defendant.

NO. CR-16041

SUPPLEMENTARY MEMORANDUM IN SUPPORT OF MOTION TO SUPPRESS STATEMENTS

Defendant has heretofore filed a Motion To Suppress Statement on the grounds the statement was taken in violation of Miranda v. Arizona and was involuntary. Defendant further contends the statement was taken in violation of his right to counsel.

The statement in question was taken by Tucson Police Department Officer Cota-Robles on April 19, 1985 at the Pima County Jail. Defendant admitted to having burglarized a residence on April 15, 1985. He was then charged with the instant offense in an indictment dated August 27, 1985 with burglarizing 4412 East 6th Street in Tucson on April 15, 1985.

On April 16, 1985, Defendant was arrested after being caught burglarizing another residence. Defendant was charged in CR-15268 with this burglary and has been found guilty by a jury. At the time of that arrest, Defendant was advised of his rights . . . .

M-X

by Officer Perez. According to Officer Perez' report, "Suspect replied that he understood his rights, and that he wanted a lawyer before answering any questions."

Notwithstanding Defendant's request for a lawyer, he was then interrogated by Officer Garrison and made incriminating statements about the April 16 burglary. He was further interrogated by Detectives Quinn and Wright.

After Defendant was in custody on the April 16 burglary, Officer Cota-Robles then received information that Defendant may be the person who committed the April 15 burglary. Apparently the description and license number of the vehicle seen during the April 15 burglary matched the vehicle driven by Defendant when arrested on April 16 for the April 16 burglary.

On April 19, 1985, Officer Cota-Robles went to the jail to interview Defendant. He was accompanied by Detective Quinn and Detective Thorson. Defendant confessed to the April 15 burglary, the subject of the instant case.

In CR-15268, involving the April 16 burglary, Defendant filed a motion to suppress the statement given that day on the grounds the statement was taken after he requested an attorney. Hearing on the motion was held October 17, 1985. By minute entry of March 5, 1986, the first day of trial in CR-15268, the Court essentially granted the motion and "Ordered that defendant's statments cannot be used in the State's case- in-chief; however, should the defendant testify, the State may use the statements to impeach the defendant."

Defendant contends the statement taken by Officer Cota-Robles on April 19, 1985 should be suppressed for the same

M-X